

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

REMOTE ORAL VIDEOTAPED DEPOSITION  
OF THE UNITED STATES AIR FORCE  
BY ITS CORPORATE REPRESENTATIVE  
COLONEL ROBERT M. FORD, JR.

Thursday, June 18, 2020

Reported by

Rebecca Callow, RMR, CRR, RPR

Job No. U061820

1 BY MR. ALSAFFAR:

2 Q. Okay. Do you agree with that, that that's  
3 one of the purposes of NICS, is to prevent dangerous  
4 criminals from getting access to handguns through  
5 federal licensed firearms dealers?

6 MR. STERN: Objection.

7 A. I believe that that's one of the purposes.

8 BY MR. ALSAFFAR:

9 Q. And when a dangerous criminal who's been  
10 convicted of a felony and is reported to the FBI and  
11 is denied access to firearms, do you agree that  
12 we're increasing the safety to the general public,  
13 that that's one of the consequences of the system  
14 when it --

15 MR. STERN: Objection. Objection.

16 BY MR. ALSAFFAR:

17 Q. You can answer.

18 A. So this would be my personal opinion.

19 So my personal opinion would be that  
20 if we're preventing someone from legally purchasing  
21 a handgun who has demonstrated a history of criminal  
22 offenses, I believe, in the aggregate, that would  
23 reduce the risk to people and -- or the population.

24 Q. **And one of the reasons -- do you agree that**  
25 **one of the reasons to report criminals like**

1 **Devin Kelley, who've been convicted, to the FBI is**  
2 **that, if we don't do that -- we don't report**  
3 **criminals like Devin Kelley, we could be increasing**  
4 **the risk of harm, generally, to the public?**

5 MR. STERN: Objection.

6 BY MR. ALSAFFAR:

7 Q. You can answer.

8 A. So this is, again, my personal opinion.

9 I do think that you can make that  
10 conclusion that we would be reducing the risk to  
11 populations.

12 If you kept people who've shown a  
13 capability of committing criminal offenses, like  
14 Devin Kelley as you mentioned, I personally believe  
15 that that is one way of reducing the risk to people.

16 And that's the intent.

17 Q. Okay. And, do you agree that, in order for  
18 the NICS system to work, federal agencies, like  
19 Security Forces and the Air Force, must accurately  
20 collect and submit criminal history data?

21 A. For it to work as intended -- as intended,  
22 yes. I would agree with that.

23 Q. And a database like NICS, or any database,  
24 is only as good as the data that's entered into it.  
25 Do you agree with that?

1 MR. STERN: Objection.

2       A.     I agree that information that relies on  
3     people to input data into it is as good as the  
4     information that's put into it.

5 | BY MR. ALSAFFAR:

6 Q. Okay. And do you agree that when a  
7 government agency like the Air Force fails to share  
8 data on dangerous felons, that they unnecessarily  
9 expose the public to increased risk of gun violence?

10 MR. STERN: Objection.

11 BY MR. ALSAFFAR:

12 Q. You can answer.

13       A.     So this would be my personal opinion.  And  
14     I believe that if personnel in the Air Force do not  
15     input information that makes itself into NICS  
16     prevents someone from purchasing a handgun, that it  
17     is a problem and could increase the risk to anyone  
18     associated with those specific individuals.

19 Q. Going back to the topics that you've been  
20 designated for, 5 and 10 and item number 1 on the  
21 second notice that I showed you, do you have full  
22 authority to speak on behalf of the government on  
23 those topics -- all those topics?

24 A. Yes.

Q. And you're aware that the answers you give

1 to my questions regarding those topics will be  
2 binding on the government as a whole?

3 MR. STERN: Objection.

4 Jamal, are you asking him insofar as  
5 Air Force Security Forces?

6 MR. ALSAFFAR: Yes. Paul, I think  
7 that's a fair objection. That's what I meant. Let  
8 me -- is it okay if I rephrase?

9 MR. STERN: Please.

10 BY MR. ALSAFFAR:

11 Q. Colonel Ford, you're aware that the answers  
12 that you give to my questions regarding those topics  
13 in the deposition notice that we've identified will  
14 be binding upon the Air Force Security Forces.

15 Correct?

16 A. Yes. I understand that.

17 I'm having a little difficulty  
18 understanding the word "binding" and what's your  
19 intent by the word "binding." If you could clarify  
20 that, it might help me.

21 Q. Yes. That's fine. That's a good example  
22 of a clarification.

23 When you -- when a witness is being  
24 designated as what's called a Federal Rule of Civil  
25 Procedure 30(b)(6) witness on certain topics like

1 you've been designated, are you aware that that  
2 means that you have been picked by the government to  
3 answer on behalf of the entire Air Force Security  
4 Forces relating to those topics, 5, 10, and topic 1  
5 of the second notice?

6 A. Yes.

7 Q. And by answering -- what I mean by  
8 "binding" upon the Air Force Security Forces, you  
9 are being put into the shoes as the person most  
10 knowledgeable about the topics that we've  
11 identified.

12 MR. STERN: Objection.

13 A. I understand that.

14 BY MR. ALSAFFAR:

15 Q. Okay. Now I want to talk to you a little  
16 bit about how you -- how you were prepared to  
17 provide the information known or reasonably known to  
18 the Air Force Security Forces regarding these  
19 matters listed in the deposition notice; topics 5,  
20 10, and topic 1 of the second notice.

21 What have you done to prepare for this  
22 deposition on those topics?

23 A. So I interviewed a few personnel, and I  
24 provided those names to Mr. Stern via email, to get  
25 some background information as to the policy and

1 Q. Would you like me to rephrase it?

2 A. Yes.

3 Q. Okay. Mr. Sablan testified under oath that  
4 when he was investigating Devin Kelley, his training  
5 told him that he did not have to submit  
6 Devin Kelley's fingerprints to the FBI even if he  
7 had probable cause to believe that he -- that  
8 Devin Kelley committed the crime.

9 That's what he testified to. Correct?

10 A. Correct.

11 Q. All right. So Mr. Sablan's understanding  
12 of what his training told him was not what the  
13 instructions require. Isn't that correct?

14 MR. STERN: Objection.

15 A. I think Mr. Sablan's understanding is not  
16 accurate. That's what I'm saying.

17 BY MR. ALSAFFAR:

18 Q. In other words, the mandatory instructions,  
19 both the DoDI 5505.11 and the 31-206 instructions  
20 that was applicable at the time of this  
21 investigation, required Security Forces  
22 investigators like Mr. Sablan to send fingerprints  
23 to the FBI if the investigator had probable cause to  
24 believe that the crime was committed. Correct?

25 A. Correct.

1 Q. Okay. In other words -- let me put it to  
2 you this way.

3 **If Mr. Sablan, investigator of**  
4 **Devin Kelley for the Security Forces, was trained**  
5 **not to submit Devin Kelley's fingerprints even when**  
6 **there was probable cause to believe he committed the**  
7 **crime, then he was not trained properly. Correct?**

8 MR. STERN: Objection. Form.

9 A. Right.

10 I just don't -- I just don't agree  
11 that that equates to him not being trained properly.  
12 That's what I'm saying to you.

13 BY MR. ALSAFFAR:

14 Q. So you're saying that it's possible he was  
15 trained properly but just didn't follow his  
16 training?

17 A. Yes. That's exactly what I'm saying.

18 Q. And according to Mr. Sablan -- and he's the  
19 one who was there on the ground at the time -- he  
20 was testifying under oath that he not trained to  
21 properly submit fingerprints when probable cause  
22 existed to believe that a crime was committed --  
23 right? -- according to him?

24 A. Yes. According to him.

25 Q. And, ultimately, Mr. Sablan was supposed to

1 and just leading into the next question, my question  
2 was, for the record, that Harry Truman had a sign on  
3 his desk at the Oval Office that said, "The Buck  
4 Stops Here." You know that. Right? That story?

5 A. Yes, sir. I've read that before.

6 Q. Okay. **And in terms of where the buck stops**  
7 **at the 49th Security Forces squadron, that buck**  
8 **stops with the commander of Security Forces**  
9 **squadron. Correct?**

10 A. In a manner of speaking, yes. The squadron  
11 commander is responsible.

12 Q. **And whatever methodology the squadron**  
13 **commander used, he was required to train his**  
14 **Security Forces investigators properly so that they**  
15 **all understood the mandatory instruction that**  
16 **related to submission of fingerprint data and**  
17 **conviction data and criminal history data to the**  
18 **FBI. Right?**

19 MR. STERN: Objection.

20 A. I agree that it's his responsibility, the  
21 squadron commander's, to ensure they are properly  
22 trained to submit fingerprints to the FBI.

23 BY MR. ALSAFFAR:

24 Q. Now, when -- do you agree that when  
25 Air Force agents are not properly trained, that can

1 submission of the Devin Kelley fingerprints to the  
2 FBI during his pretrial confinement period from  
3 June 8th, 2012, to November 7th, 2012?

4 A. So Air Force Instruction 31-205, there's  
5 paragraphs that cover in-processing of inmates. And  
6 it talks about pretrial and posttrial, that  
7 Air Force personnel can be placed into pretrial and  
8 posttrial confinement. So it covers that.

9 And then there's another set of  
10 paragraphs that covers fingerprinting. And in those  
11 paragraphs, it doesn't really separate between  
12 posttrial and pretrial as far as fingerprinting.  
13 That's what I recollect.

14 And if we have it to put on the  
15 screen, we can look at that just to be sure, but  
16 that's what I recollect.

17 Q. Yes. Yes. No problem.

18 In terms of -- let me share it with  
19 you. Just let me know when you see the instruction  
20 on the screen.

21 A. Okay. I see it.

22 Q. And I'm showing you what's Bates-stamped  
23 USA 5457. And this is the Air Force Instruction  
24 31-205 that was applicable when Devin Kelley was in  
25 pretrial confinement and posttrial confinement.

1      **Correct?**

2      A.    That's correct.

3      Q.    **And this is the Air Force Security**

4      **Corrections System Instruction. Is that right?**

5      A.    Yes.

6      Q.    **And this highlight here, this instruction,**

7      **31-205, is a mandatory instruction. Correct?**

8      A.    **Correct.**

9      Q.    **Tell me what training was provided by the**  
10     **Air Force to confinement personnel at the**  
11     **Security Forces 49th confinement facility in terms**  
12     **of fingerprinting military members who were placed**  
13     **in pretrial confinement?**

14     A.    So personnel that goes through -- excuse  
15     me -- that work in confinement sections have two  
16     different tracks that they can go down.

17                   So the requirement for the  
18     noncommissioned officer in charge of confinement,  
19     which is normally like an E-5, E-6, who's in charge  
20     of confinement, they are required to attend the  
21     corrections course that is put on by the Navy and  
22     hosted at Joint Base San Antonio-Lackland.

23                   That's an approximate four-week course  
24     where they teach them how to do corrections. They  
25     discuss fingerprinting as a means to in-processing

1 BY MR. ALSAFFAR:

2 Q. Is that correct?

3 A. According to his testimony, that's correct.

4 Yes.

5 Q. And according to his testimony,

6 Colonel Boyd is wrong and misunderstanding in

7 applying the mandatory instruction related to

8 court-martial convictions from Security Forces

9 investigations. Correct?

10 A. Yes. According to his testimony, he would  
11 be wrong.

12 Q. And if the 49th squadron commander  
13 responsible for ensuring that his Security Force  
14 investigators understand the reporting requirements  
15 as a mandatory Air Force instruction thinks that it  
16 is never the Security Forces' responsibility to  
17 submit fingerprint or conviction data to the FBI,  
18 then there's a pretty small chance that those  
19 Security Forces investigators have been properly  
20 trained. Correct?

21 MR. STERN: Objection. Calls for  
22 speculation.

23 A. I don't agree with that necessarily. They  
24 could be properly trained by the people in their  
25 section.

1 BY MR. ALSAFFAR:

2 Q. So, in other words, they're left to the  
3 devices of somebody else other than the commander to  
4 tell them how to properly understand the mandatory  
5 reporting instructions. Correct?

6 A. That's one way of putting it.

7 Q. Would you agree that it's not a very good  
8 training program for Security Forces  
9 investigators -- it's not a good training program  
10 when the commander of the squadron responsible for  
11 certifying the investigator is not even aware of the  
12 mandatory instruction requirements for reporting  
13 fingerprint and conviction data?

14 MR. STERN: Objection.

15 A. I don't necessarily agree with that.

16 BY MR. ALSAFFAR:

17 Q. Do you think it's a good training program  
18 when the Security Forces commander of a squadron is  
19 unfamiliar with the mandatory reporting requirement  
20 for the FBI?

21 A. I'm thinking here because, in my mind, what  
22 I'm saying -- thinking is that the -- it's not a  
23 good sign, but it does not mean it's a bad training  
24 program.

25 Q. Remember how we talked about that the

1 **formal training academies do not teach these**  
2 **Special Forces investigators how to -- or how or**  
3 **when to properly submit fingerprint and conviction**  
4 **data to the FBI?**

5 **They're not taught that at the**  
6 **academy, remember? Right?**

7 A. Yes. I remember that.

8 Q. Okay. And you said that that's okay  
9 because that's left to on-the-job training at the  
10 various -- underneath the various training forces'  
11 squadron commanders to teach them that element  
12 before they become certified investigators. Right?

13 A. Yes. I remember that.

14 Q. So if the training program for on-the-job  
15 training is run by a commander of the  
16 Security Forces who does not understand what the  
17 mandatory instructions for reporting fingerprints  
18 and conviction data to the FBI required, that is not  
19 a good training program, is it?

20 MR. STERN: Objection.

21 A. I think it's not a good sign of their  
22 training program. I don't agree that it's a bad  
23 training program.

24 BY MR. ALSAFFAR:

25 Q. All right. Well, one of the things that

1 1997?

2 A. That's correct.

3 Q. So let me ask a little bit different  
4 question, you know, just broadly, because one of the  
5 issues -- and let's talk specifically about issue as  
6 it relates to your topic, which is the Air Force's  
7 correction of failing to submit fingerprint data and  
8 conviction data. Okay? So that's what I'm talking  
9 about. All right?

10 A. Okay.

11 Q. So is it a correct statement that from 1997  
12 through the tragedy in this case, November 5th,  
13 2017, the Devin Kelley mass shooting, that the  
14 Air Force was having a problem in accurately  
15 reporting fingerprint data and conviction data for  
16 qualifying offenses with FBI?

17 MR. STERN: Objection.

18 A. So in my personal opinion I would say that  
19 it was -- that those DoD/IG reports do reflect that  
20 the Air Force was having an issue doing that, yes.

21 BY MR. ALSAFFAR:

22 Q. And if we want to -- let's start with the  
23 1997 report. So you reviewed that. Correct?

24 A. Yes.

25 Q. And I'm going to share my screen again with

1 BY MR. ALSAFFAR:

2 Q. Correct?

3 A. That's an interpretation of the DoD report.

4 It doesn't say those words exactly.

5 Q. Well, of course.

6 **Don't you agree that the purpose of**  
7 **these reports was to inform the Air Force**  
8 **Security Forces that there is a problem with**  
9 **reporting criminals to the FBI, and it's not just**  
10 **limited to the small sample size we were able to do.**  
11 **You agree with that, don't you?**

12 MR. STERN: Objection.

13 Mischaracterizes the document.

14 BY MR. ALSAFFAR:

15 Q. I'm asking you for your opinion as a  
16 30(b)(6) witness, Colonel, just to be clear.

17 A. I agree that the report -- the bottom line  
18 of the report is telling the Air Force you still had  
19 a problem with reporting criminal data.

20 Q. Okay. And the real objective here -- let's  
21 just talk common sense.

22 **The objective of the implementations**  
23 **of these recommendations in the DoD/IG was to**  
24 **correct the actual systemic problem in the Air Force**  
25 **Security Forces of not reporting people who needed**

1 **to be reported. That was the goal. Correct?**

2 MR. STERN: Objection.

3 BY MR. ALSAFFAR:

4 **Q. Is that correct?**

5 A. So in my personal opinion, I believe that  
6 that's the intent behind the DoD/IG report was for  
7 the Air Force to fix this problem. That's it.

8 Q. In other words, let me just put it  
9 straightforwardly. And I'm sorry. This is just  
10 such an important issue.

11 But, I mean, if the Air Force came  
12 back to you, Colonel, and said, Hey, we fixed the  
13 small sample size, but we're not going to fix all  
14 the others, and we don't have to, going forward, fix  
15 the other stuff, going forward with the convicts and  
16 the fingerprint reporting. That's not acceptable.

17 Right? Unacceptable. Right?

18 A. In my personal opinion --

19 Q. Yes.

20 A. -- I think that -- in my personal opinion,  
21 I think that that would not be acceptable to me.

22 Q. The goal here was -- for the DoD/IG was for  
23 the third or -- fourth time, if you include 1987,  
24 you include 1997, 2014, and now 2015, the IG is  
25 sending up a red flag to the Air Force

REPORTER'S CERTIFICATION

2 I, Rebecca J. Callow, Registered Merit Reporter  
3 and Notary Public of State of Texas, hereby certify to  
4 the following.

5 That the witness, ROBERT M. FORD, JR., was duly  
6 sworn by the officer and that the transcript of the oral  
7 deposition is a true record of the testimony given by the  
8 witness;

9                   That the original deposition was delivered to  
10 Jamal Alsaffar.

11                   That a copy of this certificate was served on  
12 all parties and/or the witness shown herein on  
13 June, 26, 2020.

14 I further certify that pursuant to FRCP Rule  
15 30(f)(1) that the signature of the deponent:

16 was requested by the deponent or a party  
17 before the completion of the deposition and is to be  
18 returned within 30 days from date of receipt of the  
19 transcript. If returned, the attached Changes and  
20 Signature Page contains any changes and the reasons  
21 therefor;

22 I further certify that I am neither counsel  
23 for, related to, nor employed by any of the parties or  
24 for, related to, nor employed by any of the parties or  
25 attorneys to the action in which this proceeding was

405

1 taken. Further, I am not a relative or employee of any  
2 attorney or record in this cause, nor am I financially or  
3 otherwise interested in the outcome of the action.

4

5

6 SUBSCRIBED AND SWORN TO under my hand and seal  
7 of office on this the 26th day of June, 2020.

8   
9

10 Rebecca J. Callow, RMR, CRR, RPR

11 Notary Public, Travis County, Texas

12 My Commission No. 12955701-3

13 Expires: 09/12/2021

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